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11 Attorneys for Defendant CBS CORPORATION, a Delaware
12 corporation, fka Viacom Inc., successor by merger to CBS
13 Corporation, a Pennsylvania corporation, fka Westinghouse Electric
14 Corporation

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA -**

17 HARRY LeMASTER and CAROLYN
18 LeMASTER,

19 Plaintiffs,

20 vs.

21 ALLIS-CHALMERS CORPORATION
22 PRODUCT LIABILITY TRUST, et al.,

23 Defendants.

Case No: C 08-3316 PJH

**NOTICE OF FILING DOCUMENTS
FILED IN STATE COURT ACTION**

Judge: Honorable Phyllis J. Hamilton

Dept: 3

24 Defendant CBS CORPORATION, a Delaware corporation, fka Viacom, Inc., successor
25 by merger with CBS Corporation, a Pennsylvania corporation, fka Westinghouse Electric
26 Corporation hereby submits the following documents to be filed in this action, that were
27 previously filed and served in the State Court action:

28 1. CBS Corporation's Answer to Complaint for Personal Injury and Loss of
Consortium -- Asbestos, filed on July 2, 2008.

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2. Demand for Jury Trial and Estimate of Length of Trial, filed on July 2, 2008.

DATED: August 11, 2008

POND NORTH LLP
KEVIN D. JAMISON
JENN N. CRITTONDON

By: _____

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Attorneys for Defendant CBS
CORPORATION, a Delaware corporation,
fka Viacom Inc., successor by merger to CBS
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10 Delaware corporation, f/k/a Viacom Inc., successor
11 by merger to CBS Corporation, a Pennsylvania
12 corporation, f/k/a Westinghouse Electric Corporation

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**

15 HARRY LEMASTER and
16 CAROLYN LEMASTER,

17 Plaintiffs,

18 vs.

19 ASBESTOS DEFENDANTS (B*P),

20 Defendants.

Case No: CGC-08-274669

**CBS CORPORATION'S ANSWER TO
COMPLAINT FOR PERSONAL INJURY
AND LOSS OF CONSORTIUM -
ASBESTOS**

Case Filed: May 21, 2008

21 Defendant CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by
22 merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric
23 Corporation ("Westinghouse"), answers Plaintiffs' (as used herein, the term "Plaintiff" refers to
24 all of the captioned Plaintiffs, whether singular or plural), Complaint on its own behalf and on
25 behalf of no other defendant as follows:

26 Pursuant to California Code of Civil Procedure Section 431.30(d), Westinghouse denies
27 generally each and every allegation of the Complaint.

28 **FIRST AFFIRMATIVE DEFENSE**

Neither the Complaint nor any purported cause of action alleged by the Plaintiff therein
states facts sufficient to constitute a cause of action against Westinghouse.

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1 **SECOND AFFIRMATIVE DEFENSE**

2 To the extent the Complaint asserts Westinghouse's alleged "market share" liability, or
3 "enterprise liability," the Complaint fails to state facts sufficient to constitute a cause of action
4 against Westinghouse.

5 **THIRD AFFIRMATIVE DEFENSE**

6 Neither the Complaint nor any purported cause of action alleged therein states facts
7 sufficient to entitle Plaintiff to an award of punitive damages against Westinghouse.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 The imposition of any punitive damages in this matter would deprive Westinghouse of its
10 property without due process of law under the California Constitution and United States
11 Constitution.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 The imposition of any punitive damages in this matter would violate the United States
14 Constitution's prohibition against laws impairing the obligation of contracts.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 The imposition of any punitive damages in this matter would constitute a criminal fine or
17 penalty and should, therefore, be remitted on the ground that the award violates the United States
18 Constitution.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's action, and each alleged cause of action, is barred by the applicable statute of
21 limitations, including but not limited to California Code of Civil Procedure, Sections 338, 339,
22 340(3), 340.2, 343, 353, 366.1, 377.34, and 474 and California Commercial Code, Section 2725
23 and including any applicable statute of limitation and/or statute of repose of the state of
24 Plaintiff's residence if not California.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Plaintiff unreasonably delayed in bringing this action, without good cause therefor, and
27 thereby have prejudiced Westinghouse as a direct and proximate result of such delay;
28 accordingly, this action is barred by laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiff was negligent in and about the matters alleged in the Complaint and in each alleged cause of action; this negligence proximately caused, in whole or in part, the damages alleged in the Complaint. In the event Plaintiff is entitled to any damages, the amount of these damages should be reduced by the comparative fault of Plaintiff and any person whose negligent acts or omissions are imputed to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

Plaintiff knowingly, voluntarily and unreasonably undertook to encounter each of the risks and hazards, if any, referred to in the Complaint and each alleged cause of action, and this undertaking proximately caused and contributed to any loss, injury or damages incurred by Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Any loss, injury or damages incurred by Plaintiff were proximately caused by the negligent or willful acts or omissions of parties whom Westinghouse neither controlled nor had the right to control, and was not proximately caused by any acts, omissions or other conduct of Westinghouse.

TWELFTH AFFIRMATIVE DEFENSE

The products referred to in the Complaint were misused, abused or altered by Plaintiff or by others; the misuse, abuse or alteration was not reasonably foreseeable to Westinghouse, and proximately caused any loss, injury or damages incurred by Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Westinghouse alleges that its products were manufactured, produced, supplied, sold and distributed in mandatory conformity with specifications promulgated by the United States Government under its war powers, as set forth in the United States Constitution, and that any recovery by Plaintiff on the Complaint on file herein is barred in consequence of the exercise of those sovereign powers.

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FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to exercise due diligence to mitigate their loss, injury or damages; accordingly, the amount of damages to which Plaintiff is entitled, if any, should be reduced by the amount of damages which would have otherwise been mitigated.

FIFTEENTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over the matters alleged in the Complaint because the Complaint and each alleged cause of action against Westinghouse is barred by the provisions of California Labor Code, Section 3601, et seq.

SIXTEENTH AFFIRMATIVE DEFENSE

Westinghouse alleges that at the time of the injuries alleged in the Complaint, Plaintiff was employed and they were entitled to receive Workers' Compensation benefits from their employer; that Plaintiff's employer, other than Westinghouse, was negligent in and about the matters referred to in said Complaint, and that such negligence on the part of said employer proximately and concurrently contributed to the happening of the accident and to the loss or damage complained of by Plaintiff, if any there were, and that by reason thereof Westinghouse is entitled to set off any such benefits to be received by Plaintiff against any judgment which may be rendered in favor of Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

Discovery may show that at the time of the injuries alleged in the Complaint, Plaintiff was employed by and entitled to Workers' Compensation benefits from Westinghouse; such benefits constitute Plaintiff' exclusive remedy pursuant to Labor Code section 3600 et seq.

EIGHTEENTH AFFIRMATIVE DEFENSE

Westinghouse alleges that at the time of the injuries alleged in the Complaint, Plaintiff's employers were negligent in and about the matters referred to in said Complaint, and that such negligence on the part of said employers proximately and concurrently contributed to any loss or damage, including non-economic damages, complained of by Plaintiff, if any there were; and that Westinghouse is not liable for said employers' proportionate share of non-economic damages.

NINETEENTH AFFIRMATIVE DEFENSE

Westinghouse alleges that at the time of the injuries alleged in the Complaint, parties other than Westinghouse were negligent in and about the matters referred to in said Complaint, and that such negligence on the part of said parties proximately and concurrently contributed to any loss or damage, including non-economic damages, complained of by Plaintiff, if any there were; and that Westinghouse herein shall not be liable for said parties' proportionate share of non-economic damages.

TWENTIETH AFFIRMATIVE DEFENSE

Westinghouse alleges that at all times relevant to matters alleged in the Complaint, Plaintiff's employer was a sophisticated user of asbestos-containing products and the employer's negligence in providing the product to its employees in a negligent, careless and reckless manner is a superseding cause of Plaintiff's injuries.

TWENTY-FIRST AFFIRMATIVE DEFENSE

If Plaintiff had received, or in the future may receive, Workers' Compensation benefits from Westinghouse under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, and in the event that Westinghouse is held liable to Plaintiff, any award against Westinghouse must be reduced in the amount of all such benefits received by Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

If Plaintiff had received, or in the future may receive, Workers' Compensation benefits from Westinghouse under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, and in the event Plaintiff is awarded damages against Westinghouse, Westinghouse claims a credit against this award to the extent that Westinghouse is barred from enforcing its rights to reimbursement for Workers' Compensation benefits that Plaintiff has received or may in the future receive.

TWENTY-THIRD AFFIRMATIVE DEFENSE

If Plaintiff had received, or in the future may receive Workers' Compensation benefits from Westinghouse under the Labor Code of the State of California as a consequence of the

1 alleged industrial injury referred to in the Complaint, Westinghouse demands repayment of any
2 such Workers' Compensation benefits in the event that Plaintiff recovers tort damages as a result
3 of the industrial injury allegedly involved here. Although Westinghouse denies the validity of
4 Plaintiff's claims, in the event those claims are held valid and not barred by the statute of
5 limitations or otherwise, Westinghouse asserts that cross-demands for money have existed
6 between Plaintiff and Westinghouse and the demands are compensated, so far as they equal each
7 other, pursuant to California Code of Civil Procedure Section 431.70.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 At all times and places in the Complaint, Plaintiff was not in privity of contract with
10 Westinghouse and said lack of privity bars Plaintiff's recovery herein upon any theory of
11 warranty.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 Plaintiff is barred from recovery in that all products produced by Westinghouse were in
14 conformity with the existing state-of-the-art, and as a result, these products were not defective in
15 any manner.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 Westinghouse did not and does not have a substantial percentage of the market for the
18 asbestos-containing products which allegedly caused Plaintiff's injuries. Therefore,
19 Westinghouse may not be held liable to Plaintiff based on Westinghouse's alleged percentage
20 share of the applicable market.

21 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

22 Westinghouse denies any and all liability to the extent that Plaintiff asserts
23 Westinghouse's alleged liability as a successor, successor in business, successor in product line
24 or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a
25 portion thereof, parent, alter ego, equitable trustee, subsidiary, wholly or partially owned by, or
26 the whole or partial owner of or member in an entity researching, studying, manufacturing,
27 fabricating, designing, labeling, assembling, distributing, leasing, buying, offering for sale,
28 selling, inspecting, servicing, installing, contracting for installation, repairing, marketing,

1 warranting, rebranding, manufacturing for others, packaging and/or advertising products which
2 contain asbestos.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 Westinghouse had no knowledge that any of the alleged activities of which Plaintiff
5 complains, and which allegedly were conducted on premises owned by Westinghouse, were
6 unsafe or dangerous, and Westinghouse therefore did not have a duty to warn Plaintiff regarding
7 any such alleged dangers.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 Westinghouse alleges that it was under no legal duty to warn Plaintiff of the hazards
10 associated with the use of products containing asbestos. Westinghouse further alleges that the
11 purchasers of said products, Plaintiff's employer/s, his union/s or certain third parties yet to be
12 identified, were knowledgeable and sophisticated users and were in a better position to warn
13 Plaintiff of the risks associated with using products containing asbestos and, assuming a warning
14 was required, it was the failure of such persons or entities to give such a warning that was the
15 proximate and superseding cause of Plaintiff's damages, if any.

16 **THIRTIETH AFFIRMATIVE DEFENSE**

17 Westinghouse alleges that no conduct by or attributable to it was the cause in fact or the
18 proximate cause of the damages, if any, suffered by Plaintiff, nor a substantial factor in bringing
19 about said damages.

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

21 Westinghouse alleges that its liability, if any, in this matter is extremely minor relative to
22 the liability of various third parties and, therefore, the damages, if any, assessed against it should
23 be proportionate to the degree, nature and extent of its fault.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 Plaintiff herein has failed to join indispensable parties and the complaint is thereby
26 defective, and Plaintiff is thereby precluded from any recovery whatsoever as prayed for herein.

27 ///

28 ///

THIRTY-THIRD AFFIRMATIVE DEFENSE

Westinghouse alleges that if Plaintiff's claims were already litigated and resolved in any prior action, Plaintiff's claims herein are barred based on the primary right and res judicata doctrines which prohibit splitting a single cause of action into successive suits, and seeking new recovery for injuries for which the Plaintiff was previously compensated by alleged joint tortfeasors.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Pursuant to California Code of Civil Procedure sections 378 and 430.10(d), if it is determined that multiple Plaintiffs have been listed on this complaint, then Westinghouse contends the Plaintiffs are misjoined. Because joinder is defective and improper, and defendants will be prejudiced by having to proceed against different Plaintiff with dissimilar cases, a single trial is unfair and a hardship, and separate trials on each individual cause of action should be ordered.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

The matters alleged in this complaint are encompassed within and barred by a settlement and release agreement reached by the parties which operates as a merger and bar against any further litigation on matters raised or potentially raised in connection with the settlement and release.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff has previously filed a dismissal in court dismissing all of its asserted claims, causes of action, and other theories of liability against Westinghouse with prejudice, the matters alleged in this complaint are barred by retraxit.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff has reached an accord with Westinghouse regarding this litigation and this accord was then properly satisfied, the claims, causes of action, theories of liability and matters alleged in this complaint are barred by the doctrine of accord and satisfaction.

///

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Westinghouse contends that if Plaintiff has released, settled, entered into an accord and satisfaction, or otherwise compromised his claims herein, and accordingly, said claims are barred.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Westinghouse states that the claims of the female Plaintiff, if any, are derivative of her husband's claims, and if his claims are barred or he receives no recovery, then the female Plaintiff's claims are also barred.

FORTIETH AFFIRMATIVE DEFENSE

The claims stated in Plaintiff's Complaint have been settled, compromised or otherwise discharged and Westinghouse is due a set off.

FORTY-FIRST AFFIRMATIVE DEFENSE

Westinghouse alleges that another action is pending or has been adjudicated between the parties on the same claims alleged in this action, and therefore, pursuant to Section 430.10(c) of the Code of Civil Procedure, this action is duplicative and vexatious and cannot be maintained.

FORTY-SECOND AFFIRMATIVE DEFENSE

Westinghouse asserts that California Code of Civil Procedure Section 361 is a bar to this action because Plaintiff's claims arose in another state and by the laws of that state an action cannot be maintained by reason of the lapse of time, and as a consequence, cannot be maintained in this state.

FORTY-THIRD AFFIRMATIVE DEFENSE

Westinghouse alleges that substantial justice requires that, pursuant to Section 410.30 of the Code of Civil Procedure, this action be dismissed or stayed because the facts alleged in the Complaint occurred outside of California and California is not the appropriate forum for the action.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Westinghouse alleges that all or some of the claims and/or legal issues raised in the Complaint are governed by the substantive laws of a state other than California.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Westinghouse alleges that it was under no legal duty to warn Plaintiff of the hazards associated with the use or handling of products containing asbestos, or of their existence at any premises owned, operated, controlled by Westinghouse or where products were otherwise claimed to be provided by Westinghouse. Westinghouse further alleges that Plaintiff was a knowledgeable and sophisticated user and had or should have had knowledge of the potential hazards associated with using products containing asbestos. Plaintiff's knowledge of the potential hazards associated with using products containing asbestos resulted in Plaintiff assuming the risk and being the proximate and superseding cause of Plaintiff's damages, if any. *Johnson v. American Standard* (2008) 43 Cal.4th 56.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Because of the generality of the allegations in the Complaint, Westinghouse reserves the right to amend its answer and affirmative defenses if investigation, discovery and further information should warrant such amendment, and, further, to assert any applicable matters of law during the pendency of this action.

WHEREFORE, Westinghouse prays:

1. That the complaint be dismissed or judgment be rendered in favor of Westinghouse and that Plaintiff take nothing thereby;
2. For its costs of suit;
3. For appropriate credits and setoffs arising out of any payment of Workers' Compensation benefits as alleged above; and
4. For such other and further relief as the Court may deem just and proper.

DATED: July 2, 2008

POND NORTH LLP

By: 

DANIEL W.S. IP

Attorneys for Defendant CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation

PROOF OF SERVICE

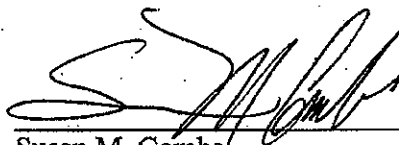
I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 350 South Grand Avenue, Suite 2850, Los Angeles, CA 90071.

On July 2, 2008, I served the following document(s): CBS CORPORATION'S ANSWER TO COMPLAINT FOR PERSONAL INJURY AND LOSS OF CONSORTIUM - ASBESTOS on the interested parties in this action as follows:

☒ By E-Service: I electronically served the above document(s) via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

Executed: July 2, 2008

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Susan M. Combs
4520-2180

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[Home](#) > [Sent Items](#) > Transaction 20492369[Printable Version](#)<<[Previous transaction](#) [Next transaction](#)>>Case number: 274669 [\[View Case History\]](#)

Filed and served at 7/2/2008 11:40 AM PDT

Case name: LeMaster vs Asbestos Defendants (Brayton)

Court: CA Superior Court County of San Francisco

Judge: Judge, Asbestos

☐ View all document(s) as a list ☒ View document(s) inline<<[Previous document](#) [Next document](#)>>☐ Document List (1 of 4) Total Statutory Fees: \$335.00

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4520.2180☐ Parties and Recipients☐ Sending Parties (1)

Party	Party Type	Attorney	Attorney Type	Firm
Viacom Inc	Defendant	Pond, Frank D	Attorney In Charge	Pond North LLP

☒ Recipients (65)☐ Additional Recipients (0)

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9 Attorneys for Defendant CBS Corporation, a
10 Delaware corporation, f/k/a Viacom Inc., successor
11 by merger to CBS Corporation, a Pennsylvania
12 corporation, f/k/a Westinghouse Electric Corporation

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**

15 HARRY LEMASTER and
16 CAROLYN LEMASTER,

17 Plaintiffs,

18 vs.

19 ASBESTOS DEFENDANTS (B*P),

20 Defendants.

Case No: CGC-08-274669

**DEMAND FOR JURY TRIAL AND
ESTIMATE OF LENGTH OF TRIAL**

Case Filed: May 21, 2008

21 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES HEREIN:

22 PLEASE TAKE NOTICE that defendant CBS Corporation, a Delaware corporation, f/k/a
23 Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a
24 Westinghouse Electric Corporation hereby demands a trial by jury in the above-entitled action
25 and estimates that the length of trial will be six to eight weeks in duration.

26 DATED: July 2, 2008

POND NORTH LLP

27 By: 

DANIEL W.S. IP

28 Attorneys for Defendant CBS Corporation, a
Delaware corporation, f/k/a Viacom Inc., successor
by merger to CBS Corporation, a Pennsylvania
corporation, f/k/a Westinghouse Electric Corporation

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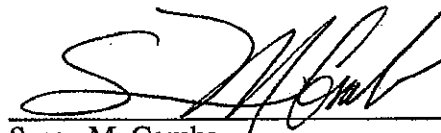
I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 350 South Grand Avenue, Suite 2850, Los Angeles, CA 90071.

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☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Susan M. Combs
4520-2180

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Filed and served at 7/2/2008 11:40 AM PDT

Case name: LeMaster vs Asbestos Defendants (Brayton)**Court:** CA Superior Court County of San Francisco**Judge:** Judge, Asbestos☐ View all document(s) as a list ☒ View document(s) inline<<[Previous document](#) [Next document](#)>>**☐ Document List (2 of 4) Total Statutory Fees: \$335.00****Main Document, 2 pages ID: 24860609**[Document History](#) | [PDF Format](#) | [Original Format](#)**Document type:** Demand for Jury**Clerk review status/action:** Accepted**Security:** Public**Date reviewed:** 7/2/2008**Statutory fee:** \$0.00**Document title:** DEMAND FOR JURY TRIAL AND ESTIMATE OF LENGTH OF TRIAL**☐ View Document****☐ Other Transaction Data****Transaction Comment:**
None**Financial Comment:**
None**Client matter code**
4520.2180**☐ Parties and Recipients****☐ Sending Parties (1)**

Party	Party Type	Attorney	Attorney Type	Firm
Viacom Inc	Defendant	Pond, Frank D	Attorney In Charge	Pond North LLP

☐ Recipients (65)**☐ Additional Recipients (0)**

Document/Notice	Name	Delivery Method	Delivery Status
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☐ Courtesy Copy Recipients (0)

none available

☐ Sender Information**Submitted by:** Susan Combs, Pond North LLP**Authorizer:** Kevin D Jamison, Pond North LLP

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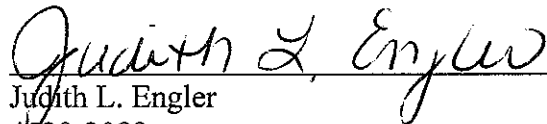
On August 15, 2008, I served the following document(s): **NOTICE OF FILING DOCUMENTS FILED IN STATE COURT ACTION** on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows, to be served by either First Class Mail or by e-mail (as so registered with the Northern District of California), on all counsel of record in this case as reflected in the attached service list.

Executed: August 15, 2008.

☒

(Federal)

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Judith L. Engler
4520-2089

MASTER SERVICE LIST***LeMaster, Harry and Carolyn v. CBS Corporation, etc., et al.***

USDC, Northern District of California Case No. CV08-0366-PJH

Parties Accepting E-Service

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